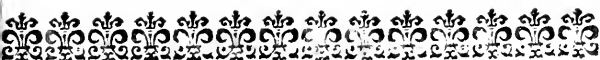


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THE
RIGHT
OF THE
House of *STEWART*
TO THE
Crown of SCOTLAND
CONSIDER'D.



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*Imperium semper ad optimum quemque a minus bono
transfertur.* SALL.



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THE
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CONSIDER'D.

THE Dispute betwixt the *Whigs* and the *Jacobites* turning upon the two Points of *Right* and *Expediency*, most of our late Pamphlets have been employed in considering the latter. This Branch of the Argument is indeed that, which, in our Reasoning with the *Whigs*, needs chiefly to be insisted on; but, in our Reasoning with *Jacobites*, can only

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be of Force, when their Notions of Right are in the first Place destroyed. A Person, perswaded of the divine indefeasible Right of Kings to *govern wrong*, can never be touched with Arguments drawn from their doing so ; and therefore, in all our Reasonings with these People, this of *Divine Right* ought particularly to be insisted on.

Indeed, the Arguments advanced by the *Whigs*, against this Monkish Dream of divine, hereditary, indefeasible Right, have been so many and various, so strong and convincing, that the Obstinacy of the *Jacobites* in maintaining it, is perhaps not the least surprizing Phenomenon in Nature ; but as yet it is not Time to despair of their Conviction. The Perswasion of this gave Rise to the following Thoughts ; The End of publishing them to the World being, to refresh the Remembrance of many, and, if the Author dare express his Hope, to correct (if possible) the Prejudices of a few.

If we are true *Scotsmen*, and the Author writes to none else, we cannot fail of being fired with Indignation, when told, That we neither are, nor ever were, a free and independent People ; That we have been, since Time immemorial, the *absolute Property* of a certain Family, who claim us as their Inheritance ; That we are now the

the Property, not of a King, but the Shadow of a King, the banished Race of a Tyrant. Yet this, certain late Manifesto's have sounded in our Ears, wherein we, and our Country, are claimed as the *Estate* of one, who tells us he possesses by virtue of a divine, hereditary, indefeasible Grant. Whatever the *Jacobites* may think of this, sure there is no Man of common Sense, but must look upon it as the grossest Affront capable of being offered himself or his Country. *They* indeed hug their Chains, and are proud of being *Slaves*, nay, are fond of ranking with their Flocks and Herds, and of being bought and bartered like them: But, thank Heaven, we are not all of the same brutal Disposition; There are some amongst us that still imagine themselves *free*, the Property of no King, no Pretender, whatever.

These few Gentlemen and Freemen imagine, that there is no Person nor Family who ever had, or now have, a divine, hereditary, indefeasible Right to govern them. They allow, that the Race of *Stewart* did for many Years possess the Throne of *Scotland*; but they insist, that it was by no means in virtue of such a Right, seeing the first of that Race that ever reigned, reigned by the Consent of a free People
and

and Authority of Parliament. And they apprehend, that no Man can convey more Right to another, than he himself is vested with.

To demonstrate this, they beg leave to look back as far as the Death of *Alexander III.* who died *Anno* 1285.

The Race of that Monarch becoming extinct by the Death of his Grand-daughter *Margaret*, in her Voyage from *Norway*; the Right of Succession to the Crown of *Scotland* came to be called in question.

Two chief Competitors appeared, both of them Descendents of *David* Earl of *Huntington*, whose nearest Heir was allowed by all to have Right to the Crown: The one, *John Baliol*, was his Great-Grandson, by his eldest Daughter *Margaret*; the other, *Robert Bruce*, was his Grandson, by his second Daughter *Isabel*.—The Question therefore came to be, Whether the Grandson of the eldest Daughter, or the Son of the second Daughter, was to be preferred, in Right of Succession, to the Crown?

This Dispute was referred to *Edward* the First of *England*, who at that Time grasp'd at the Superiority of *Scotland*, and only wanted a proper Tool for his Purpose. Both the Competitors were intent to purchase a Crown at any Rate; and, as *Bruce's*
Plea

Plea was the worst, * he first swore to *Edward*; and *Baliol* follow'd his Example.

Baliol contended, That, according to the Custom of *Scotland* in the Succession of Heritage, the eldest Daughter and her Descendents excluded the younger Daughter and her Descendents.

Bruce contended, That he was a Degree nearer than *Baliol*, being only Grandson to *David* Earl of *Huntington*, while *Baliol* was Great-Grandson; and that, according to the Opinion of foreign Feudists and Lawyers, the Male nearest in Degree should be preferred.

Bruce's Plea was rejected; and *Edward*, in just Agreement with the Custom of *Scotland* in other Heritages, determined in favours of *Baliol*. — Accordingly (1293) *Baliol* was acknowledged King by the States and Nobility of *Scotland*; but after a short Reign of Four Years, on withdrawing his Allegiance from *Edward*, he was carried Prisoner to *England*; thereafter was delivered into the Hands of the Pope, who consigned him to the Care of some *French* Bishops, under whose pious Tutorship he languished and died.

During *Baliol's* Retirement in *France*,
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* Vide *Rud. Ann.* ad *Buchan.* P. 424. ad fin.

Robert Bruce, the Grandson of that *Robert* who had competed with *Baliol*, got into the Throne of *Scotland*, even while *Baliol* was alive, and had a Son, *Edward*, capable of succeeding him. And the States, in a Convention held at *Air* in the Year 1315, were not content with barely acknowledging him as King, but, by a solemn Deed, settled the Crown on him, and a particular Succession of Heirs therein narrated *.—

During his Son *David's* Minority (1329) young *Baliol* attempted to recover *Scotland*; he succeeded, was crowned, and reversed the Acts made in *Bruce's* Reign, as made during an Usurpation: But he too was soon expelled, and *David Bruce* settled on the Throne.

David died without Issue; and his Sister having married *Walter* great Steward of *Scotland*, her Son *Robert* came to the Crown in the Year 1370, and was the first of the Name of *Stewart* that ever enjoyed that high Dignity.

From this short Recapitulation of our antient History, according to our best Historians, the Gentlemen I formerly mentioned observe in the *first* Place, That,

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* Vide N^o. 24. of *Mr. Anderson's* Appendix,

considering the Crown of *Scotland* as Heritage, *John Baliol* had the Right of Succession to it, and was nearest Heir thereto. 2dly, That agreeable to the Doctrine of divine, hereditary, indefeasible Right, his Son *Edward* ought to have succeeded him. 3dly, That therefore the Reign of *Robert Bruce* was an Usurpation; he himself, his Son *David*, and all his Descendents, Usurpers. Whence, lastly, they conclude, either that the Family of *Stewart* did at first usurp the Crown of *Scotland*, and must be supposed to have continued to do so till the contrary is proven; or that they mounted the Throne, and swayed the Sceptre to the last, on Principles plainly Revolutionary, the Consent of a free People, and Authority of Parliament.

In order to illustrate these Observations, and to make us attend to their just Consequences, they proceed in this Manner.—And, first, they take it for granted,—That the Crown is as much a Man's Property as his Estate, and that therefore it must descend in Succession like his Estate †.—This,

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† Vide Mr. Rud. ub. sup. P. 432. *Regnum Scoticum non ex ordinum suffragiis pendeat, sed jure sanguinis hereditario in genere proximos continuo descendat.—Eodem jure quo filii in parentum defunctorum bona & possessiones dominium acquirere solent.*

they apprehend, the *Jacobites* will not find in their Hearts to deny; if they do, their Pamphlets and Manifesto's will convict them. In the *next* Place, they take it for granted, That by the Laws and Custom of *Scotland*, at the *Æra* referred to, Heritage unentailed descended to the Heirs of an eldest Daughter, exclusive of those of the younger, in the same way as it does now. This, they apprehend, the *Jacobites* cannot deny; if they do, they are desired to read over the Act of Settlement in favours of *Robert Bruce*, wherein they will find, that it proceeds directly upon the Supposition of what is here demanded *. They are likewise desired to consider the Arguments us'd by *Bruce* himself before King *Edward*, wherein he expressly allows it to be so.—And, if none of these will satisfy them, they are desired to point out the Time when our present Law of Succession, agreeable to what is here affirmed to be our old one, first took place.—In the *last* Place, they take it for granted, That the Crown of *Scotland* in *Baliol's* days was an unentailed Estate, and therefore (to speak in the Stile of Lawyers) descended to Heirs whatsoever.

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* Vide *And. Appendix*, N°. 25. ad fin.

If any refuse this, they will be so good as shew us a Copy of the Entail.

Now, these Propositions being granted, will the *Jacobites* be pleas'd to tell us, by what Right *Robert Bruce* came to succeed to the Crown of *Scotland*? Was it by a right Divine, Hereditary, and Indefeasible? Was it by a Right similar to that by which any Man succeeds to his Estate? If it was, will they try to reconcile it with the foregoing History? From that it appears pretty evident, that *Bruce* was not the nearest Heir to the Estate of the Crown of *Scotland*; That nearest Heir was undoubtedly unhappy *Baliol*:—If he was, could he forfeit this Estate?—The *Jacobites* cannot have the Face to say he could. If they do, let them point out the Reasons of Forfeiture, which, in Consistency with their own Principles, can satisfy any reasonable Man. If they say, he could not forfeit it; then, pray, how came *Bruce* in? what Right had he? and what Right had the States of *Scotland* to make him King?—But allowing that *Baliol* the Father by his own Crimes could forfeit this grand Estate, which by the by some *Jacobite* Authors maintain, how con-

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sistently,

sistently, let the Reader judge *; yet, how could his innocent Son be made to suffer for his Father's Faults? How came *Bruce* to usurp the Crown, the Property of another? and why rather did he not content himself with being Regent in *Baliol's* Name, as the memorable Sir *William Wallace* had done before him? Why did not all the *Scots*, to a Man, assist in re-establishing young *Baliol* upon the Throne of his Ancestors: and how came they to oppose him; to hinder a Man of his own, his own by a Right from Heaven?

How the *Jacobites* can answer these few Questions, in Consistency with their avowed Principles, and so as to maintain that *Robert Bruce* succeeded to the Crown of *Scotland* by a divine, hereditary Right, is past our Comprehension. As to the last perhaps they may say, That the *Scots* opposed young *Baliol*, because he attempted to recover the Kingdom by the Assistance of *England*, at that Time our greatest Foe. It may be so; but they will allow themselves to

* Vide *Macken. Works*, Vol. 2. P. 454. And for which we have this remarkable Reason; "If a King will alienate his Kingdom his Subjects are free, not by their Power to resume their first Liberty, but because the King will not continue King; and they are free by his Deed, not by their own Right."

to be put in mind, that what *England* was to us then, *France* is now.

To shun these unlucky Consequences, some may perhaps aver, That *Bruce's* Right to the Crown was better than *Baliol's*; and that the Competition ought to have been determined, not by the Laws and Customs of the Country contended for, but by the Laws and Customs of the *Goths* and *Vandals*, the Feudal Law; by which Law, say they, *Bruce's* Right would have been preferable. Now, if *Scotland* was a Feu, as these Gentlemen would make it; pray let them tell us, of what Over-lord it held, and what was the Nature of the Holding *. Further, let them explain, how the Customs of other Nations either could or should have regulated the Succession to the Crown of *Scotland*, and make it run in a Chancel, contrary to the Laws and Customs of the Country. But besides, they will remember, that even the Feudal Law is not so clearly on their Side of the Question, as they would seem to intimate. Sir *Thomas Craig*, tho' he declares for their Opinion, yet candidly owns, that the two great Lights (as he terms them) of the Feu-

* Let it be remembred, that these very People, in the Dispute about the Homage, assert the Independency of *Scotland*, and maintain that it was no Fee of *England*.

Feudal Law, *Gerard* and *Obert*, differ.— And indeed, he himself delivers his Opinion with an unusual Modesty and Diffidence: And considering that he wrote under the Reign of a Monarch, peculiarly fond of hereditary Right, and from whom he had received distinguishing Favours, and that he introduces it in his *Treatise of Homage*, where it evidently tends to the strengthening of his Argument, it is a Wonder he says so little about it, and shews us that he was not very positive in his Opinion *. 'Tis with the utmost Respect we mention this great Man; But it is no Derogation from that to say, That his Zeal for his King carried him, as it has done many, a little too far. He indeed states a Case, and determines upon it; but it is plainly different from the one which really existed.

But the Opinion of Lawyers is not the only Thing to be regarded in the present Case: The Opinion of our brave Ancestors, the Nobility, Clergy and Commons of *Scotland*, ought to have at least an equal Weight with us, their Posterity; and should

* It is worth observing, that Sir *Thomas* falls, in this very *Treatise*, into the vulgar Error, of making *Bruce* refuse to swear to *Edward*; a Circumstance which indeed strengthens his Argument, but is by no means true, as the Reader will see from the Authorities formerly quoted.

should fill us with a noble Jealousy of that Liberty they were so sollicitous to transmit to us. Of this we have still some illustrious Monuments, as old as the Period of Time we were just considering; and from which we shall take the Liberty to make two short Extracts relative to our present Argument *. In a Letter wrote 6th *April* 1320, by the Nobility and Community of *Scotland*, to the Pope; we have the following remarkable Passage. After they have made Answer to *Edward's* Claim of Homage, they tell his Holiness, they had been delivered from all their Troubles by their brave King *Robert Bruce*, *Whom*, say they, *also divine Providence, and the Right of Succession, according to our Laws and Customs, which we will maintain to the utmost, and the due Consent and Assent of us all, have made our Prince and King: To him, as the Deliverer of the People, by preserving our Liberties, we are bound to adhere, as well upon account of his Right, as by reason of his Merit. But, if he desist from what he has begun, and shew any Inclination to subject us, or our Kingdom, to England, or the English; we will use our utmost Endeavour to expel him immediately as our Enemy, and the Subverter of his own,*

and

* Vide *Anderson's* Appendix, N^o. 11,

and of our Right; and we will make another our King, who is able to defend us. It is not for Glory, Riches and Honours we fight, but only for Liberty, which no good Man loseth but with his Life. Such was the Spirit of our Ancestors.

In a Declaration published by the Clergy, in a general National Council of Scotland, held at Dundee 24th February 1309, it is said, *That the Right and Title of King Robert Bruce, to the Crown, was declared by the Judgment of the People; That he was assum'd to be King by their Knowledge and Consent; And that, being advanced by their Authority to the Crown, he was thereby solemnly made King of Scotland* †.—Now, tho' it is true, that in both these, particularly in the Beginning of the last, (which for Brevity's sake we are obliged to omit) they mention *Robert's* Right to the Crown, by Succession; yet it is submitted, whether they lay the most Weight upon it,

or

† Vide *Anderson's* Appendix, N^o. 12. How far (says that Author) these Things establish and confirm a Revolution-settlement, as being agreeable to our antient Constitution; or how far they discover that a Claim of Right is no Novelty in *Scotland*; and how far the Title of *Robert Bruce* and his Successors, who have sway'd our Sceptre for Four hundred Years, is founded in these Principles; I leave to every Man to judge.

or upon their own Consent and Election. They express a due Regard for the Royal Line; and to be sure, hereditary, tho' not indefeasible Right, may possibly prevent certain Inconveniencies: But at the same Time they boldly declare, they will prefer a Regard for their own Liberty to both.— Besides, we cannot help being of Opinion, that what they say about it, did not proceed so much from the Perswasion of any such Right in the Person of *Bruce*, as from a Desire of defeating *Edward's* Plea for the Homage, arising from *Baliol's* base Surrender of the Kingdom. And we cannot but think, that if *Robert* had been as fully perswaded of his divine, hereditary Right to the Crown, as his Successors seem to have been of theirs, he would never have allowed such bold Declarations of the contrary, to pass, under his very Nose.—

But now, perhaps the *Jacobites* will reply, Pray, what is all this to us? What is the Conquest you have gained? What tho' *Robert Bruce* was an Usurper? and such, without divine, hereditary Right, he was; we know of no Successors the *Baliol* Family has: If we did, we are ready to disown the House of *Stewart* for ever, and would assert the divine, hereditary, indefeasible Right of Monarchy, at the Ex-

pence of our own Blood, and the Blood of our Country.

We shall for once believe the *Jacobites* sincere, particularly in the last Part of their Assertion; and, we verily believe, few in this Country, after such feeling Experiences, will doubt of it. But then, as to the first Part of it, we humbly apprehend, that is not incumbent upon us: 'Tis none of our Business, to hunt after *Jure Divino* Monarchs; that is the Task of those who believe there are any such in Existence. We have never yet learn'd from the *Jacobites* how to know them, the Marks they give us are so various and odd. The Ladies bid you look for Majesty of Presence, and Genteelness of Person; The Priests, for a *Shechinah* about the Head, like the Glory of the Saints: Some desire, you would touch for the Evil; While all that others require is a long Nose, and a grim Complexion *. But all of them put us in mind of the antient *Egyptians* seeking a new Calf to worship, on the Death of their old one.—However, tho' this is by no means incumbent on us, yet we shall put the Gentlemen in mind, they will find what they seek, in the House and
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* A more proper Characteristick of the Family of *Steuart*, than Mercy.

Family of *Douglas*.—We shall not detain the Reader, by marking the Steps of this Descent; but only observe from *Buchanan*, *Boethius* and many other of our Historians, That *William* Earl of *Douglas* was so well convinced of his hereditary Right to the Crown of *Scotland*, as Descendent of the *Baliols* and *Cumins*, that, at the Accession of *Robert* II. the first of our Kings of the Race of *Stewart*, he insisted upon his Claim to such a Degree, that *Robert* was fain to give him his own Daughter in Marriage, to appease him *. This is sufficient for our present Argument: For how soon the *Jacobites* tell us when the *Baliol* and *Brucian* Family united in a *Stewart*, (which is absolutely necessary to be done, ere they can infer that the *Stewarts* have a divine, hereditary, indefeasible Right to our Crown) we shall endeavour to be more particular †.

Till they do this, we are hopeful they will allow us, that the Settlement of 1688 is in every Respect as good as the Settlement of 1315; and consequently, that the
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* Vide *Buchan. Boeth.* Hist. of the House of *Douglas*, &c.

† Mean while, they will remember, that no Length of Time, not Five hundred Years, can found Prescription, in the present Case; else, let them explain, how any Length of Time can destroy a divine, indefeasible Right;—or, how, on the other Hand, it can constitute it.

illustrious Family that is now in Possession of our Throne, by vertue of the one, has as much of what they call divine, hereditary, indefeasible Right, as ever the Family of *Stewart* had, who possess'd it so long by vertue of the other. This they must allow, or they'll please to tell us where the Difference lies. In 1685, the direct Line of our Kings being extinct, the collateral took place; so did it at the Death of *Alexander III.* There was then a great Contest about settling the Succession; witness the Exclusion-bill, &c. So was there 'twixt *Bruce* and *Baliol*. About that Period, the Succession was settled by hereditary Right, in the Accession of the Duke of *York*; so was it also, when *Baliol* got the Crown. *Baliol* was deposed for enslaving his Kingdom to the Crown of *England*; *James VII.* was deposed for enslaving his to the Court of *Rome*, and Popery. *Baliol* was justly banish'd into *France*; so was King *James*. *Baliol* dy'd in the hands of *French* Bishops; so did King *James* too. The *Scots* justly put the Crown on *Robert Bruce's* Head, their Deliverer from *England*; so did the *British* on King *William*, their Deliverer from *Rome*. The *Scots* did not think it fit to make *Bruce* only Regent during *Baliol's* Lifetime; neither did the *British*,

British, the Prince of *Orange*, during the Life of King *James*.—Young *Baliol* attempted to regain the Crown by the Assistance of *England*; so has the young Chevalier by the Assistance of *France*. In all these they agree.— In this they differ; Young *Baliol* succeeded, the young Pretender has fail'd.

The whole of what has been now said, consists either of Facts, or of what is humbly apprehended to be the plain and easy Consequences of Facts: Tho' therefore it should not convince, it is hop'd it will not offend. The Design was, to revive the Memory of some Things, which some Men seem to have forgot; and, by a Collection of Circumstances, to place the Affair in the most striking Light. It is hoped, that the *Whigs* will here discover somewhat to confirm them in their Opinion, and that the *Jacobites* (if any such should cast their Eye that Way) will find, that their Adherence to the Family of *Stewart* is not the Effect of Principle, but Prejudice. It is somewhat strange, to see Men adhere obstinately to a Family, on the Principle of divine, hereditary, indefeasible Right; and endeavour to set them on a Throne, to which, allowing the Doctrine to be true, they never had a Title. But our Admiration

tion cannot but be great, when we see them hazarding their Lives, their Fortunes, their All, nay, involving their whole Country in Distress, Misery and Ruin, making it the Scoff of its Enemies, and the Grief of its Friends, and all to advance a Family to the Throne, who either never had a Right to it, or were justly deprived of it.—If these Gentlemen are indeed convinced of divine, hereditary, indefeasible Right, it is expected and intreated they would act up to their Principle; and, if they had done so, *Scotland* had not been, what it this Day is, the Scene of Death, and the unblest Grave of its Children.—Say no longer then, That you fight for the Family of *Stewart*, on the Principle of divine, hereditary, indefeasible Right: If that be indeed your Principle, it is so far from obliging you to fight for them, that it binds you to fight against them.

The End.





